

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 128 of 1998

in

SPECIAL CIVIL APPLICATION No 8164 of 1997

with

LETTERS PATENT APPEAL No 307/1998 to 358/1998

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

and

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

KISHOR LAKHA

Appearance:

MR JC SHETH for Appellants - Union of India
in all the appeals
MR YV SHAH for Respondents - Workmen
in all the appeals

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 06/11/2003

ORAL COMMON JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI for the Court)

1. These appeals are directed against the common judgement and order dated 22-12-1997 of the learned Single Judge, dismissing a group of petitions filed by the appellants against the order passed by the Labour Court under Section 33(C)(2) of the Industrial Disputes Act, 1947, by which the Labour Court, Godhra directed the appellants to pay the bonus amount of Rs.3,000=00 to each of the workmen with interest at the rate of 12% and costs of Rs.5,000=00 to the Union.

2. The respondents - workmen, in all these matters, had approached the Central Administrative Tribunal challenging the termination of their services as casual labourers. The Central Administrative Tribunal, by its common order dated 8th June 1989, held that the action of the authorities in terminating their services was violative of Section 25-N of the said Act. The termination orders were, therefore, set-aside and the appellants were directed to reinstate them and pay their backwages within three months from the date of the order "by treating them to be in continuous service of the respondents". Admittedly, the Special Leave Petition filed against the said decision of the Tribunal was rejected by the Hon'ble the Supreme Court on 16-10-1989 and the directions of the Tribunal became final. It, however, appears that, while reinstating these workmen, as per the direction of the C.A.T. and paying them arrears of wages, bonus amounts for the period from the date of termination till reinstatement were not paid. These workmen, therefore, filed recovery applications before the Labour Court, Godhra under Section 33(C)(2) of the said Act.

2.1 The Labour Court, Godhra, by its order dated 14-8-1987, held that since these workmen were reinstated in service pursuant to the directions of the Central Administrative Tribunal with all backwages and continuity

in service, there was no reason to deny them the bonus amount which was paid to the other employees during the period in question. It was also held that these workmen were not disqualified from getting the bonus under the provisions of Section 9 of the Payment of Bonus Act, 1965. The Labour Court relied upon the decision of the Bombay High Court in *Goa Bottling Pvt. Ltd. v. Pradip Desai*, reported in 1992 II C.L.R. 490, the decision in *Dhandapani v. Salem Co-operative Wholesale Stores Ltd.*, reported in 1995(1) L.L.J. 635, and the decision of this Court in *Project Manager, Ahmedabad Project, ONGC v. Sham Kumar Sehgal*, reported in 1995(1) GCD 97 (Guj), in support of its findings.

3. In the group of petitions preferred against the decision of the Labour Court, directing payment of bonus, the learned Single Judge, observing that the present appellants were unable to show any provision from the Payment of Bonus Act, 1965 (hereinafter referred to as "the said Act"), under which these workmen were not entitled for benefit of bonus, and that, no interference was called for in the order passed by the Labour Court, rejected the petitions. It was, however, made clear that in case the services of any of the respondent workmen were terminated, then he would be entitled to the bonus under the order of the Labour Court till the date he remained in service.

4. The learned counsel for both the sides have raised their contentions by referring to the record of Letters Patent Appeal No.128 of 1998 treating it as the lead matter and have stated that all other matters are identical.

5. It has been contended on behalf of the appellants that, during the period that the orders of termination of these respondents - workmen were operative, they had not actually worked, and therefore, they were not entitled to any bonus in view of the provisions of Section 8 of the said Act. It was further argued that the computation of working days was required to be done only as per the provisions of Section 14 of the said Act and therefore, the period during which their services were terminated could not be computed towards the working days for the purpose of the provisions of the said Act. It was finally contended that the Labour Court had no jurisdiction to entertain the recovery applications under Section 33(C)(2) of the Industrial Disputes Act, 1947, because, the orders were made by the Central Administrative Tribunal and that the only way of implementing its order was to prefer a contempt petition

before that Tribunal.

6. Though the learned Single Judge observed in paragraph 3 of the impugned order that certain disputed questions of facts which were sought to be raised as to whether the workmen were still continuing or not, could not be decided in a petition under Article 227 of the Constitution of India, we have entertained the appeals on merits in view of the specific reference to the provisions of Article 226 of the Constitution made therein, in context of which, the learned Single Judge has given reasoning in paragraphs 4, 5 and 6 of the impugned order. In other words, since it is not clear from the impugned order of the learned Single Judge that the Court had exercised the jurisdiction only under Article 227 of the Constitution, we are not inclined to dismiss the appeal on the ground that no Letters Patent Appeal would lie against the decision of a Single Judge under Clause 15 of the Letters Patent. Reference to Article 227 in paragraph 3 of the judgement appears to have been made only in the context of some factual aspect as regards the continuance or otherwise of the workmen, at the time of hearing, which was sought to be urged before the Court.

7. The word "bonus" is not defined in the provisions of the Payment of Bonus Act, 1965. However, as held by the Supreme Court in *Sree Meenakshi Mills Ltd. v. Their Workmen*, reported in AIR 1958 SC 153, the true nature and character of the workmen's claim for bonus against their employer is well settled. Bonus is not a mere matter of bounty gratuitously made by the employer to his employees; nor is it a matter of deferred wages. As held by the Supreme Court, the term "bonus" is applied to a cash payment made in addition to wages. It generally represents the cash incentive given conditionally on certain standards of attendance and efficiency being attained. The claim for bonus cannot be effectively made unless two conditions are satisfied: (i) the wages paid to workmen fall short of what can be properly described as living wages, and (ii) the industry must be shown to have made profits which are partly the result of the contribution made by the workmen in increasing production. (See paragraph 6 of the judgement).

7.1 In *The Central Bank of India v. Their Workmen*, reported in AIR 1960 SC 12, the Supreme Court, in paragraph 25 of the judgement, held that bonus in the industrial sense as understood in our country does come out of the available surplus of profits, and when paid, it fills the gap, wholly or in part, between the living

wages and the actual wage. It is an addition to the wage in that sense, whether it be called contingent or supplementary.

8. Under Section 8 of the Payment of Bonus Act, 1965, every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of the said Act, provided he has worked in the establishment for not less than thirty working days in that year. This provision relates to the eligibility for bonus for which the only requirement is that the employee concerned should have worked in the establishment at least for not less than thirty working days in an accounting year. It has been provided by Section 10 of the said Act that every employer shall be bound to pay to every employee, in respect of the accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee. Thus, the payment of bonus is a statutory obligation and it is not a bounty or an ex-gratia payment. Section 9 deals with disqualification for bonus and provides that an employee who is dismissed from service for fraud, riotous or violent behaviour, theft, misappropriation or sabotage shall be disqualified from receiving the bonus. In the present case, the question of disqualification on any of such grounds never arose.

9. It, therefore, follows that when bonus is payable to an employee and is not paid, he is deprived of money which he is entitled to receive. The workman would, therefore, be entitled to prefer an application under Section 33(C)(2) of the Industrial Disputes Act, 1947, if he is deprived of the bonus amount by the employer, for recovering the same.

9.1 A Division Bench of this Court in *Union of India v. Dharamsi F. Zala*, reported in 1992 I L.L.J. 880, in the context of an application made under Section 33(C)(2) of the Industrial Disputes Act, 1947, on the basis of the orders of the Administrative Tribunal, held:

"The Supreme Court has, in a series of decisions, indicated that by way of execution, the authority under Section 33C(2) of the I.D. Act can quantify the benefits of service if such quantification is possible. It cannot be said that only because an application for contempt may be made before the Tribunal for violation of its order, a workman is precluded from making an application before the Labour Court. The decision of the Labour Court under Section 33C(2) is not per se illegal or without jurisdiction".

9.2 Therefore, the contention raised on behalf of the appellants that the Labour Court had no jurisdiction to entertain the applications under Section 33C(2) of the Industrial Disputes Act, 1947, cannot be accepted.

10. When the C.A.T. directed that the workmen should be reinstated with backwages treating them to be in continuous service, the definition of "salary and wage" under Section 2(21) of the Payment of Bonus Act, 1965, or the definition of "wages" under Section 2(rr) of the Industrial Disputes Act, 1947, in which these expressions do not include bonus, as specifically excluded thereunder, cannot be invoked for the purpose of whittling down the benefit of backwages intended by the order of the Tribunal. The word "backwages" in the order of the Tribunal in the said context has to be given a wide meaning and would, in our opinion, include all monetary and other benefits to which the employee would have been entitled to, had his services not been terminated.

11. On the basis of the provisions of Section 14 of the said Act, which relate to the computation of number of working days, it was urged on behalf of the appellants that the period during which an employee has worked in the establishment as contemplated in Section 8 for the purpose of eligibility for bonus is to be worked out only on the basis of section 14. There is no substance in this contention, because, Section 14 is a specific provision made with reference to the provisions of Section 13 which relates to proportionate reduction of bonus in certain cases and it has nothing to do with the eligibility of an employee to get bonus which is dealt with by Section 8 of the Act. Under Section 13 of the said Act, where an employee had not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced. For this purpose, an employee shall be deemed to have worked in the establishment of any accounting year also on the days covered by Clauses (a), (b), (c) and (d) of Section 14. Thus, Section 14 of the said Act on which reliance was sought to be placed has no bearing on the controversy arising in the present case, namely, whether an employee who is reinstated in service with continuity and backwages, can be said to have worked on the establishment during the intervening period for the purpose of considering his eligibility for bonus under

Section 8 of the Act.

12. As noted above, the Central Administrative Tribunal had clearly directed that all these respondents - workmen, whose services were terminated, should be reinstated and be paid their backwages treating them to be in continuous service of the appellants. This would mean that they should be treated in service as if the order of termination was never passed and be paid their backwages accordingly. A direction to pay backwages in the judgement or award on the footing that the employee so reinstated should be treated to be in continuous service, would obviously mean that all the benefits of the employment, which would have otherwise been due to him, had his services not been terminated, should be given to him. The substantial effect of such a direction would be that the employee so reinstated should be deemed to have worked even during the period when the order of termination operated, because, by virtue of the judgement and award setting aside the order of termination on the ground that it was illegal and void, such an order was never made in the eye of law and cannot be given any recognition while computing the wages and other benefits which would have become due to him in absence of such an order on the footing that he had continued to work as an employee. When the order of termination of service is set-aside and reinstatement with full backwages is ordered, such order cannot be given any effect, after it is set aside, for the purpose of denying bonus on the ground that the employee had not actually worked. The order of termination, which is set-aside, as being illegal and void, cannot be given, even such limited recognition for the purpose of considering the eligibility for bonus under Section 8 of the said Act. It would, therefore, necessarily follow that an employee, whose order of termination is set-aside and who is ordered to be treated in service as if it was never made and to whom backwages are payable, would be deemed to be working in the establishment within the meaning of section 8 of the said Act so as to entitle him to be considered as eligible for bonus even for the period during which he may not have actually worked.

13. In Goa Bottling Pvt. Ltd. (supra), the Bombay High Court, in paragraph 14 of its judgement, held that, in the computation of the backwages, in case of a reinstated workman, the benefit of revised wage or salary arising out of a revised payscale, as also yearly increment and revised dearness allowance should enter the calculation of arrears of backwages, and that leave encashment or bonus, if other workmen in the same

category have been paid the same, would also be his dues. The Patna High Court in Colliery of Pure Dhansar Coal Co., Dhanbad v. Prabhu Dayal Sharma, reported in 1973(26) F.L.R. 116 has held in paragraph 7 of the judgement that, when the award ordered reinstatement with backwages, the term "wages" there must be taken in a comprehensive sense, i.e. all that was due to the workman on account of wages, bonus etc. which go with the wages. The Division Bench of this Court in Bipinchandra P. Singwala v. Navin Fluorine, reported in XXII G.L.R. 1070, while directing the backwages to be paid to the employee till the date of his reinstatement, made it clear in paragraph 5 of the judgement that, backwages will include all the payments to which a permanent employee would be entitled to, such as, dearness allowance, increments, bonus, etc.

14. The question whether a workman, whose order of dismissal has been set-aside in a writ petition, can claim bonus for the period from the date of his dismissal till the date of reinstatement, in an application made under Section 33C(2) of the Industrial Disputes Act, 1947, came up for consideration before the Madras High Court in Superintending Engineer, Vellor Electricity System v. K.Palani and another, reported in 1972(I) L.L.J. 15 and in paragraph 5 of the judgement, the learned Single Judge, in the context of the provisions of Section 8 of the Payment of Bonus Act, 1947, held as under :

"5. Section 8 speaks of an employee working in the establishment for not less than thirty working days in that year to make him eligible for bonus. When an employee, for no fault of his and involuntarily, is prevented from working in the establishment for the prescribed number of days, does it axiomatically follow that he is ineligible for bonus? The contribution of physical labour or otherwise by an employee in the interests of the industry and for the benefit of the employer, which is reflected in the phrase "work in the establishment", postulates a normal atmosphere wherein there is no strife or misgiving between the employer and the employee during the year. In the absence of such normalcy, to wit, when an employee is illegally dismissed, it cannot be said that such an employee "did not work in the establishment" as is normally understood. "Worked" in Section 8 of the Act, having regard to the historic background already referred to, should mean "ready and

willing to work". Such working should not be understood with reference to the dictionary meaning of the word and the eligibility understood in the abstract. "Bonus" itself being a payment made by an employer to an employee to maintain industrial harmony and to give a fillip to the employees to exert their utmost to keep up the industry active and aloft, such involuntary stepping down from work by an employee cannot be termed or equated to non-working of the employee in the establishment. the cause causens for such a state of affair is the illegal dismissal order of the employer. But for the dismissal, he would have worked; but for the dismissal, normal circumstances would have prevailed. It is only in the wake of such a clear, undisturbed and normal atmosphere that the formula of eligibility prescribed in Section 8 has to be worked and understood. In this sense, if everything was normal, the worker, to sustain a case for bonus or to be eligible for it, should have worked in the establishment for not less than thirty working days in that year. Both in abnormal circumstances wherein he is prevented from working by an overt act on the part of the employer, which is ultimately branded as an illegal act by a competent court, then the reasonable inference is that the employee's statutory eligibility for bonus within the meaning of Section 8 cannot be said to have been lost. Nor can the employer refuse to accede to a demand for such bonus if it is otherwise payable under the provisions of the Act."

14.1 The aforesaid view has been confirmed by the Division Bench of the Madras High Court in The North Arcot District Co-op. Supply and Marketing Society Ltd., Vellore Vs. The Presiding Officer, Labour Court, W.P. No.10310 of 1982 decided on 3-10-1989 (See Judgement of the Madras High Court in the case of Ahamed Hussain v. Management of Swadeshi Cotton Mills, reported in 1999 LLR 904, paragraphs 4 and 7).

14.2 Identical view was taken by this Court in Project Manager, Ahmedabad Project, ONGC (supra), in which it has been held in paragraph 9 of the judgement, in the context of the provisions of Section 8 of the said Act, that when the workman was prevented from working by an overt act of the employer which is ultimately set-aside and the employee is reinstated in service, then the reasonable inference is that the employee's statutory eligibility

for bonus within the meaning of Section 8 to the said Act cannot be said to have been lost.

15. For the foregoing reasons, we do not find any substance in any of the contentions raised on behalf of the appellants. All these appeals are, therefore, dismissed with costs. The Registry is directed to keep a copy of this judgement in each of the appeals.

[R.K.ABICHANDANI, J.]

[K.M.MEHTA, J.]

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